

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 396

HUGO DEGREGORY, APPELLANT,

vs.

ATTORNEY GENERAL OF THE STATE  
OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE  
OF NEW HAMPSHIRE

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[fol. 1]

**IN THE SUPERIOR COURT FOR MERRIMACK  
COUNTY, STATE OF NEW HAMPSHIRE**

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**WILLIAM MAYNARD, Attorney General of the  
State of New Hampshire,**

**v.**

**HUGO DeGREGORY.**

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**RESERVED CASE**

This is a proceeding under N.H. RSA (Supp.) 588:8-a and N.H. RSA 491:20, the so-called Subversive Activities Act and the Superior Court contempt procedure utilized in such cases to compel testimony thereunder.

On November 22, 1963, before the Attorney General, and again on May 20, 1964, before the Superior Court for Merrimack County, upon being ordered to do so, Hugo DeGregory refused to answer a number of questions relating to the alleged existence of a Communist Party in New Hampshire and his activities therein, citing reasons therefor but specifically declining to invoke any constitutional privilege against self-incrimination.

The Court ordered:

May 20, 1964. Hugo DeGregory is found in contempt of this Court. Hugo DeGregory is ordered committed to the Merrimack County Jail and there to remain for a period of one year from this date or until he may purge himself of contempt. The petitioner is to stand committed. Pending appeal bail is set at \$1,000.00. Allowed to go on own recognizance.

DeGregory duly excepted to the admission of certain exhibits, questions, rulings and order of the Court, all of

which were duly noted, and will appear more particularly in the transcript.

All questions of law raised by the exceptions and these proceedings are reserved and transferred.

The original petition and answer thereto are to be printed as an appendix.

The transcripts of the November 22, 1963, hearing before the Attorney General, and the May 20, 1964, hearing before the Superior Court, and State's Exhibit 1 (Report of Attorney General to N.H. General Court on Jan. 5, 1955) shall be transferred without printing unless otherwise [fol. 2] ordered by the Court.

Reserved and transferred.

Martin F. Loughlin, Presiding Justice.

August 25, 1964

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#### PETITION

Comes now William Maynard, Attorney General of The State of New Hampshire and respectfully represents:

1. That by provision of Chapter 307, Laws of 1953 as extended by Laws of 1955, Chapter 197 and RSA 588:8-a as inserted by Laws of 1957, Chapter 178, as said Attorney General your petitioner was directed by the Legislature of this State to investigate and report on subversive activities and the presence of subversive persons within the State of New Hampshire, make full and complete investigation of any violations of Chapter 588 of Revised Statutes Annotated, and that the conduct of this investigation and the proceedings thereunder have been delegated to petitioner by the Legislature of this State.

2. That pursuant to this authority and directive from the Legislature of this State, your petitioner issued a lawful subpoena to Hugo DeGregory, Hudson, New Hampshire, on November 12, 1963, which subpoena was duly

served in hand upon said Hugo DeGregory by Andrew J. Polak, Deputy Sheriff, Hudson, New Hampshire, on November 14, 1963, and that said subpoena directed the presence of Hugo DeGregory at Room 314, State House, Concord, New Hampshire at 10:00 A.M., on Friday, November 22, 1963; and that pursuant to said subpoena Hugo DeGregory then appeared as directed, at which time said Hugo DeGregory again declined to respond to questioning claiming that the petitioner had not laid a proper foundation. That at no time did said Hugo DeGregory exercise the privilege against self-incrimination as provided in the New Hampshire Constitution or avail himself of the grant of immunity provided in RSA 588:17 (supp.).

3. That under the provisions of said Chapter 588 the petitioner has no power to punish for contempt but must refer this witness to the Superior Court pursuant to the provisions of RSA 491:19, 20.

4. That transcripts in full of the proceedings of November 22, 1963 at the State House are available to the Court and will be furnished if so desired.

5. That as appears in said transcript, the refusal of the witness to answer the questions propounded is without legal foundation and contemptuous in the extreme.

6. That such questions are relevant to an investigation [fol. 3] of whether there are violations of the provisions of said Chapter 588 and it is contrary to settled legal authority to require petitioner to present a *prima facie* case to establish a probable cause for questioning.

Wherefore petitioner prays:

I. That pursuant to the provisions of RSA 491:20, this Court shall proceed in this matter as though the original proceedings had been in this Court and that the said Hugo DeGregory be adjudged to be in wilful contempt of this Court for the reasons aforestated.

II. That should the preceding prayer be denied that the same questions be propounded to Hugo DeGregory in the presence of the Court and that in the event he persists in refusal to answer that he be adjudged in contempt of this Honorable Court and that this Court make such orders in the premises as justice requires.

III. That in the event said Hugo DeGregory elects to proceed to answer questions put, that his questioning at least to the extent of the original transcript be completed in the presence of this Honorable Court in full and that any further questioning pursuant to the investigation authorized by said Chapter 588 of this witness take place in the presence of this Honorable Court.

Respectfully submitted,

William Maynard, Attorney General.

*Duly sworn to by William Maynard, jurat omitted in printing.*

January 10, 1964

Certificate of service (omitted in printing).

[fol. 4]

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ANSWER

Comes now Hugo DeGregory, defendant in the above entitled petition, and makes answer as follows:

1. Defendant denies that paragraph 1 of the petition accurately states the law of New Hampshire as set forth in RSA, chapter 588, ss 8a.
2. Defendant admits the allegations of paragraph 2 of the petition.
3. Defendant admits the allegations of paragraph 3 of the petition.

4. Defendant admits the allegations of paragraph 4 of the petition, and requests that the petitioner be ordered to furnish the transcript therein referred to.

5. Defendant denies the allegations of paragraph 5 of the petition.

6. Defendant denies the allegations of paragraph 6 of the petition.

And Further Answering, defendant says that the summoning and questioning of defendant by petitioner as alleged in the petition was without proper legal foundation and a denial of due process of law to said defendant, pursuant to the terms of the Fourteenth Amendment to the United States Constitution. Defendant further alleges that petitioner is not in this proceeding engaged in any investigation which he is entitled to conduct under the provisions of RSA, chapter 588, ss 8a, and that he has shown no basis or probable cause for conducting said investigation.

Wherefore, Defendant Prays that the petition herein be dismissed, and for such other and further relief as may be necessary or advisable in the premises.

By his Attorneys,

Howard S. Whiteside, Lawrence J. Walsh, 18 Center St., Wolfeboro, N.H.

January 28, 1964.

Certificate of service (omitted in printing).

[fol. 5]

IN THE SUPERIOR COURT FOR MERRIMACK COUNTY

STATE OF NEW HAMPSHIRE

April Term 1964

#15,236

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STATE OF NEW HAMPSHIRE THROUGH WILLIAM MAYNARD,  
ATTORNEY GENERAL,

vs.

HUGO DeGREGORY.

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**Transcript of Hearing—May 20, 1964**

Hearing in re above entitled matter held before Honorable Martin F. Loughlin, Presiding Justice, Merrimack County Superior Court, Concord, New Hampshire, May 20, 1964.

**APPEARANCES**

The parties were represented by counsel namely,

William Maynard, Esq., Attorney General, Joseph F. Gall, Esq., Assistant Attorney General, for the State.

Parkman, Robbins & Russell, Boston, Massachusetts, By: Howard S. Whiteside, Esq., Lawrence J. Walsh, Esq., Wolfeboro, New Hampshire, for Hugo DeGregory.

Ellen M. McCue, Stenographer.

[fol. 6] Mr. Maynard: May it please the Court, we are here on a petition which was filed, I believe, on January 13, 1964. We are here to seek the assistance of the Court in obtaining answers to certain questions which were propounded to Mr. DeGregory on November 22, 1963 by my office while carrying out the assignment given us by the Legislature to inquire into subversive activities in New



Hampshire. We propounded certain questions and the respondent declined to answer them. We ask the Court to, after giving Mr. DeGregory an opportunity to answer the questions, to find him in contempt if he doesn't answer the questions.

Would you take the stand Mr. DeGregory?

Mr. Whiteside: May it please the Court there are questions of law involved here which are raised in the answer of [fol. 7] the defendant in the case and at the appropriate time I wish to be heard on those questions.

Court: All right.

(Mr. DeGregory takes the stand.)

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HUGO DEGREGORY, Hudson, New Hampshire called as a witness in his own behalf, being duly sworn, testified as follows,

Direct examination.

By Mr. Gall:

Mr. Gall: If it please the Court, I have in my hand a copy of the transcript of the original hearing held at the State House, Room 314, on November 22, 1963.

Q. Have you ever been a member of the Communist Party?

Mr. Whiteside: If the Court please, I object to the question, I wish to be heard at this time.

Court: All right.

Mr. Whiteside: If the Court please, I want to raise briefly the history of this investigation and the law on the [fol. 8] right of the Attorney General to investigate under the statute under which he purports to act. This is the third proceeding involving this defendant. The first one came in 1955 and Mr. Wyman then Attorney General summonsed the defendant in for questioning and at that time various questions of law were then raised which ended by

going to the U. S. Supreme Court and the State prevailed by a vote of six to three of the U. S. Supreme Court. The proceeding went back to the Superior Court of New Hampshire whereupon the Attorney General immediately filed a completely new proceeding and questions of law were raised to that proceeding. That went to the U. S. Supreme Court wherein the State prevailed by a vote of five to four. That went back to the Superior Court of New Hampshire. [fol. 9] The last of November in the Hillsborough County Court, Mr. DeGregory purged himself of contempt by answering the questions outstanding against him: "Are you presently a member of the Communist Party?" He answered that question in the negative. The Court then ordered him purged of contempt and he left the court house with no proceeding outstanding against him. Shortly thereafter, the present Attorney General issues a new subpoena for DeGregory to come in and answer questions and at that point we get to what is the foundation of the Attorney General's rights and power to summons in a witness to answer questions. As the Attorney General has said he is authorized by statute to investigate subversive activities but only under certain conditions, and the first condition is constitutional. [fol. 10] No man—no private person can be subjected to an investigation unless the state has overriding cause to make such investigation, in other words, a legislative investigating committee. The Attorney General can't just up and investigate with no substance no foundation at all, and we say that is what the Attorney General is doing in this case. Now with regard to the substance as held by the cases. Under the statute, the Subversive Activities Act, the right to investigate is the overriding right of the State of New Hampshire to protect itself from subversion. That is the basis on which the Attorney General can investigate. Where no subversive activities; no danger to the State of New Hampshire is shown then the Attorney General has no warrant to investigate. The legislative [fol. 11] Chapter 588:8-a has laid down the conditions of the Attorney General's investigating: that he must have

reasonable and reliable evidence of the violations of the Subversive Activities Act before he can go forward. In order to go forward at this point he must satisfy the Court—there are cases on this—he cannot proceed without satisfying the Court that he has the foundation and he has to show what it is, and to show probable cause to go forward with the investigation. Then, supposing he shows the probable cause; supposing he produces evidence here to satisfy the Court that there are as of now and in the recent past reasonable and reliable evidence of violations of the Subversive Activities Act, then he has to line up the defendant. He cannot just summons John Jones from the street [fol. 12] and say “Are you connected with the Communist Party?” “Are you connected with subversive activities?” He has to provide a foundation as to why he summonsed in John Jones and as to why he has probable cause to believe that John Jones can contribute to the investigation.

Now I don't know whether your Honor has read the transcript of the hearing before the Attorney General last November. In his petition the Attorney General said that was available and offered to make it a part of the record. In my answer I said it should be a part of the record and in that transcript can be found the crux of the matter of whether the Attorney General can proceed. On page 2 of that transcript I raised the question as to the Attorney [fol. 13] General laying a foundation and it is my belief in that whole transcript that he never did lay a foundation; he never produced evidence reasonable and reliable of violation of the act; he never justified his going forward to question the witness. And then as to the witness himself I inquired why he should be questioning Mr. DeGregory and he stated that he has considerable information about DeGregory as a member of the Communist Party in his file. He would not specify as of when. Mr. DeGregory made a sworn statement in the proceeding and I would like to read it in full. “I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not

been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities "in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the State of New Hampshire at any time the authority you have cited, section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today." And in the face of that sworn statement, the Attorney General produced nothing to contradict it. He made reference to the 1955 report of Mr. Wyman as Attorney General.

Now it is the law, your Honor, that an investigation based on a danger to the state, and that is what this has to be based on, it has to be based on a danger that the state is facing now. It is not a matter of what danger may [fol. 15] have existed ten or fifteen years ago, and if the Attorney General has any evidence of such a danger he must show that it is in the present or in the recent past rather than going back to the old papers handed down from Mr. Wyman's time. He must then contradict the sworn evidence of Mr. DeGregory. He must show something to counteract the sworn evidence if he is going to entitle himself to inquire of Mr. DeGregory as to communistic activities in New Hampshire.

In the case of Nelson vs. Wyman, which was the first case to pass on the Subversive Activities Act found in 99NH, a question was raised as to whether the Attorney General could make inquiry as to activities before 1951 when the Subversive Activities Act was first passed, and [fol. 16] the Court said he could because such questions were subsidiary to the main proceeding, the main proceeding being subversive activities in New Hampshire at the time the Attorney General was inquiring. All right now, if the Attorney General here can show the reasonable and reliable evidence of subversive activities today or in 1960, or even within the period of six years, the

statute of limitations, then you might rule that he was entitled to go back so long as his going back was subsidiary to the investigation of what might constitute a current threat to the State of New Hampshire and in the absence of showing a current threat to the State of New Hampshire he can't do anything, he can't do anything with the old material that Mr. Wyman left in the file and proceed [fol. 17] with it. I say that the Attorney General, to the best of my knowledge, is called upon by the statute when he makes an investigation to file a report with the Legislature. To the best of my memory no such file or report has been filed since 1955 by Mr. Wyman. If there is any evidence of subversive activities warranting a report to the Legislature it has not been shown since that time. I suggest to your Honor instead of shadow-boxing; instead of going behind unknown alleged sworn statements of unknown date; we can cut this proceeding short by calling on the Attorney General to submit to you the evidence which he believes is reasonable and reliable relating to violations of the act and to submit to you the evidence connecting the defendant with these activities and if he cannot submit these to you then the petition should be [fol. 18] dismissed as it is a waste of the time of the Court and is an infringement on the rights of the defendant, and I submit to you that the Court call upon the Attorney General to produce that evidence before he proceeds with this questioning.

Court: Brother Whiteside, the basis of your contention is on the statute of limitations?

Mr. Whiteside: Or on the investigating act itself, your Honor, which went into operation in June of 1957 and the defendant here has stated under oath that he has had no connection with communistic activities; no knowledge of them, since that statute was passed in June of 1957.

Court: Brother Gall.

Mr. Gall: Your Honor, with respect to the statute of limitations I cite State vs. Kinne 41NH 238 which states that: "The state is not bound by the provisions of a [fol. 19] statute by which any of its prerogatives, rights, titles or interests would be divested unless the statute be made by express words to extend to and include the State in its provisions." There is no such provision in the statute, your Honor.

Court: What about the foundation?

Mr. Gall: With respect to foundation, your Honor, in the transcript of November 22, 1963, the foundation is laid here and I understand that your Honor has a copy of this proceeding—virtually word for word of the same foundation that was laid in this court on June 28, 1960 which is the previous proceeding that Mr. Whiteside has been referring to, and at that time as is in the transcript here, the Attorney General referred to the June 19, 1955 report which the Attorney General had made to the New Hampshire [fol. 20] Legislature. I have a copy of it here which sets forth the background of Mr. DeGregory not only in this state but in other states. The Court at that time considered and made a judgment that the amount of foundation was substantial and it complied with RSA 588:8-a. If it please the Court, if I could refer to Wyman v. DeGregory 103 NH 214 at p. 216 where the Court at that time met some of the objections that Mr. Whiteside has made here today. And if I could quote: "It is the defendant's contention that the present statute no longer permits the Attorney General 'to determine whether subversive persons . . . are presently located within this state' since that language which appeared in the previous legislation (Laws 1953, c 307 and Laws 1955, cc 197 and 340) [fol. 21] does not appear in these words in RSA 588:8-a (supp) as enacted in 1957. . . . This statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA ch. 588. The

statute specifically provides that the results of the investigation shall be reported to the Legislature together with the Attorney General's 'recommendations, if any, for legislation.' This clearly indicates that the Legislature has demanded a report as to whether further legislation in the field of subversive activities is required."

With respect to evidence that must be produced here, or [fol. 22] that the State must show there is danger, that is the opinion of counsel. There is no citation for it anywhere. This is a case that fits four square with every objection that has been posed previously in the 1955 report which was accepted by our court and the Supreme Court.

If the Court please, in addition to the 1955 report the State of New Hampshire wants to know who has been active with Mr. DeGregory; who was on the rolls of the Communist Party in the state; who was secretary; and whether any force or violence has been involved; the State desires to know whether he was a paid functionary of the Communist Party. The 1955 report states that. Sworn testimony was furnished to the committee that he was. The state wants to know who paid him and whether he [fol. 23] knew where the funds came from. In the files of this committee there is extensive documented sworn testimony to the effect that DeGregory had been active for a long time within the Communist Party within the state; that he has considerable information about persons who have been active in the conduct of communist affairs. The committee would like to know whether in fact he has been a part of the communist underground which existed in the late forties and fifties; where his assignments may have taken him and who directed him to go. It would like to know what information he has to seek to find out whether there has been any violation of the act and whether or not any of these acts should concern the Legislature to enact further legislation or not.

[fol. 24] Court: Do you propose to introduce as an exhibit the January 1955 report?



Mr. Gall: Yes, I do, your Honor.

Court: Brother Whiteside, I understand you agree to introduce as an exhibit without objection the transcript of the hearing held on November 22, 1963?

Mr. Whiteside: I not only agree, I urge it, your Honor, and if I may reply to my brother, Mr. Gall. I have a memorandum of law which gives citations as to what an investigating committee should have as a foundation. May I comment once again, the Attorney General is trying to go back to the middle fifties and before and not tie it to anything current at all. If he has the testimony let him produce it. What is he afraid of.

Court: Why don't you let the stenographer mark those exhibits.

Show Brother Whiteside the transcript.

[fol. 25] Mr. Whiteside: No objection to the transcript. Marked 1955 Report to General Court State's Exhibit #1.

Marked Transcript of Hearing November 22, 1963 State's Exhibit #2.

Court: Brother Whiteside, regarding Wyman v. DeGregory, 103 NH 214 at p. 217, I believe our Supreme Court at that time stated that there was reasonable ground laid for foundation through the introduction of this January 1955 report and on the basis of its decision I will now rule there has been a proper foundation laid and your exception may be noted.

Mr. Whiteside: Please note my exception, your Honor.

Court: Is there anything further you wanted to say, Brother Whiteside, before Brother Gall proceeds?

Mr. Whiteside: Not at this time, your Honor.

Mr. Gall: Does the Court desire that I repeat the question that was asked of Mr. DeGregory?

[fol. 26] Court: Yes.

Q. Have you ever been a member of the communist party?



A. I must decline to answer the question, Mr. Gall, for all the reasons given by my attorney, also because I have heard no claim made by the Attorney General to the effect that he has information relating to violations which involves me. Furthermore, I would like to say at this time, Mr. Gall, it has been ten years that I have been faced with these accusations and I think that after ten years the state should stop hiding behind baseless information. If it has derogatory information against me, I would like to know who made this information, when it was made, and I would like an opportunity to face my accusers in open court. Beyond that, I have no further comment except that I decline for all the reasons cited here in my behalf.

Mr. Whiteside: Before going on, may I consult with the witness.

(Attorney Whiteside confers with witness.)

Witness: Your Honor, could I add something to that.

I would like to repeat the statement that I made at the [fol. 27] hearing on November 22nd, that I am not now a member of the Communist Party and have not been at any time since this authority under which I was subject has been on the statute books; that I have no knowledge of any communistic activities in New Hampshire during this period, or any violations of law during this period of six and one-half years. In fact, I have not even been aware of the existence of any Communist Party in the State of New Hampshire at any time that this authority has been on the statute books. In view of the foregoing, I do not understand what I have to face here today.

Mr. Gall: Your Honor, I respectfully request the Court that the witness be directed to answer the question.

Court: Do you invoke your right against self incrimination?

Witness: I do not, your Honor.

Court: You refuse to answer the question?

Witness: I decline to entertain the question for the reasons I have given.

Mr. Gall: Your Honor, may I proceed with some additional questions?

Court: Yes.

[fol. 28] Mr. Gall: May I respectfully request the Court to ask Mr. DeGregory the question that I have asked him?

Court: Do you want to read the question back to me?

(Question read back)

Court: Mr. DeGregory, the Court orders you to answer the question: "Have you ever been a member of the Communist Party?"

Witness: I must respectfully decline for the reasons I have given, your Honor.

Court: You do not invoke the right against self incrimination?

Witness: I am not.

Court: We will take a short recess.

After recess.

(Mr. DeGregory resumes the stand)

Mr. Maynard: May it please the Court, the State would like to proceed to ask additional questions of the respondent. We face some sort of a dilemma. Before we asked [fol. 29] or one of my predecessors asked the question of the respondent "Are you presently a member of the Communist Party?" Some years later, and apparently the question became somewhat obsolete by that time, he purged himself of contempt. If there should be an appeal from whatever the Court should find and again the respondent purges himself of contempt then it may take years in order to complete the investigation of Mr. DeGregory and bring the matter to an end unless we are allowed to proceed to ask the questions. The law seems frustrated to a certain extent. I would like the privilege of going on with other questions.

Court: All right.

Mr. Gall: May it please the Court.

Q. When did you join the Communist Party?

A. My answer remains the same, Mr. Gall.

[fol. 30] Mr. Gall: It is respectfully requested that Mr. DeGregory be directed to answer the question, your Honor.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "When did you join the Communist Party?"

Witness: I must decline to do so, your Honor.

Court: Do you invoke the right against self incrimination under the Fifth Amendment?

Witness: I do not.

Q. Were you a paid member of the Communist Party?

A. My answer remains the same.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "Were you a paid member of the Communist Party?"

Witness: I must respectfully decline.

Court: Do you invoke your right under the Fifth Amendment?

Witness: No, I do not.

Q. Were you an officer of the Communist Party?

[fol. 31] A. I must decline that question also.

Court: Mr. DeGregory, the Court orders and directs you to answer the question: "Were you an officer of the Communist Party?"

Witness: I must decline to answer the question for the reasons stated.

Court: Do you invoke your right against self incrimination?

Witness: I do not.

Q. Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?

A. I must decline to answer that question.

Court: The Court orders and directs you to answer the question: "Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?"

Witness: My answer remains the same, your Honor.

Q. Did you attend Communist Party meetings in New Hampshire?

[fol. 32] A. I must decline to answer that question for the same reasons.

Court: The Court orders and directs you to answer the question as to whether or not you attended any communist meetings in New Hampshire.

Witness: I must continue to decline, your Honor.

Court: You don't invoke the Fifth Amendment?

Witness: No, I do not.

Q. To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?

Mr. Whiteside: I would like to know as to what period the inquiry is made.

Court: Does the Attorney General wish to state what period he is referring in his question?

Mr. Gall: Your Honor, the 1955 report has been admitted into evidence and has been accepted as laying a foundation, and in addition the statement here has been [fol. 33] provided as to foundation and the background of this man's activities, and associations with the Communist Party. Based on information that is in the report, your Honor, which is already admitted into evidence, Mr. DeGregory is listed as being a member of the Communist Party as early as 1937.

Mr. Whiteside: May it please the Court, I merely asked what period the question is limited to. May I interject at this time the exhibit of 1955 was admitted before I could

object. I want my specific objection to that admission registered.

Court: Your exception is noted to that, Brother White-side.

Mr. Gall: Your Honor, based on the information that is in the report covering that period of years, which is any period during the period that is reflected in the report.

[fol. 34] Court: I will allow the question. Did you understand the question?

Witness: Not quite, your Honor.

Court: What was the question, Mr. Gall.

Q. To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?

A. I must decline for the same reasons I have given.

Court: Do you understand the question, Mr. DeGregory?

Witness: Yes, I think I do.

Court: The Court orders and directs you to answer the question: "To what extent did Communist Party District I in Boston, Massachusetts, have control over the party's activities in New Hampshire?"

A. I must decline, your Honor.

Court: You do not invoke the Fifth Amendment?

Witness: No, I do not.

Q. Did you ever attend any Communist Party meetings in New Hampshire wherein any person advocated to overthrow the—overthrow, destroy or alter the Government of [fol. 35] the State of New Hampshire, by force or violence?

A. I must decline to answer that question also.

Court: Do you understand the question?

Witness: Yes, I do.

Court: The Court orders and directs you to answer it.

Witness: I must continue to decline. I do not invoke the Fifth Amendment.

Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted,

advised or taught by any means the commission of an act to constitute a clear and present danger to the security of this state?

A. Well, since that question calls upon me to make a judgment I will do so. I cannot see how activities of non-existent organization can constitute a clear and present danger to the State of New Hampshire. To that extent I will answer that question.

Q. I ask you, sir, did you ever attend any Communist Party—

A. —I must decline to answer that.

Q. Have you answered that question to the best of your ability?

A. In the context of this hearing, yes.

[fol. 36] Court: I am going to allow the question.

Mr. Whiteside: Your Honor, I might point out in the previous question asked: "Did you ever attend any Communistic Party meetings in New Hampshire?" The witness has declined to answer that.

Court: I realize that.

Q. At any such meeting did one or more persons conspire to commit any such act?

A. Mr. Gall, I asked you if you were speaking about violations of law to present some evidence. You have not done so, therefore, I must decline to answer the question. I am being linked directly with the violation of the law here, but I have yet to hear any claim on your part that you have such evidence. Therefore, I must decline to answer that question.

Court: You understand the question?

Witness: I certainly do.

Court: The Court orders and directs you to answer the question.

Witness: I must continue to refuse.

Court: Do you want to invoke the Fifth Amendment?

[fol. 37] Witness: I do not, sir.

Q. Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?

A. I must again decline to answer for the reasons given.

Court: Do you understand the question?

Witness: I do.

Court: The Court orders and directs you to answer.

Witness: I must continue to decline.

Court: You do not invoke the Fifth Amendment?

Witness: I do not, sir.

Q. Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?

A. I must decline to answer that question.

Court: Do you understand the question?

Witness: I do, sir.

Court: The Court orders and directs you to answer it.

Witness: I must continue my refusal to answer this question.

Court: You do not invoke the Fifth Amendment?

[fol. 38] Witness: I do not.

Mr. Gall: I have no further questions. Your Honor, it is respectfully requested that the witness be herein found in contempt of the Court.

Court: Brother Whiteside.

Mr. Whiteside: Well, I have asked Brother Walsh to speak at this time in response to the Attorney General's request.

Mr. Walsh: Your Honor, proceeding on the assumption that the Court will grant the Attorney General's request and find Mr. DeGregory in contempt, I'd like to recite a little background as to what has happened in the past. In each instance following the citation of contempt, Mr. DeGregory has been incarcerated in the county jail on both occasions for a period of approximately three weeks each, [fol. 39] during which his then New Hampshire counsel

sought the establishment of bail. Since Mr. DeGregory has appeared voluntarily for the last ten years before the Court and before the Attorney General, I respectfully request in this particular instance, in as much as appeal will be taken, that this Court find in its prerogative and in its province, even though he be found in contempt of this Court, to allow Mr. DeGregory to be released on his own recognizance. The Court has our assurance that Mr. DeGregory will appear at any future hearing pending appeal.

Court: I think that may be premature at this time. You may renew your motion.

Mr. Walsh: Yes, sir.

Clerk: Hugo DeGregory, the Court has made the following decree: May 20, 1964. Hugo DeGregory found in contempt of Court. Hugo DeGregory is ordered committed to the Merrimack County jail and there to remain for a period of one year from this date, or until he may purge himself of contempt. The petitionee is to stand committed pending appeal. However, bail is set at \$1,000.00, and you are allowed to go on your own recognizance.

[fol. 41]

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STATE'S EXHIBIT #1

SUBVERSIVE ACTIVITIES IN NEW HAMPSHIRE

REPORT OF THE ATTORNEY GENERAL

TO

THE NEW HAMPSHIRE GENERAL COURT

Pursuant to Laws 1953, Chapter 307

January 5, 1955

LOUIS C. WYMAN

Attorney General

\* \* \* \* \*



[fol. 42]

**HUGO DeGREGORY****Background**

Hugo DeGregory was born in San Francisco, California, in 1914, and completed high school in New York City. In the 1930's, he resided in Springfield, Massachusetts. He served in the U. S. Army from 1941-1945, receiving an honorable discharge. After World War II he lived in Boston and Worcester, Massachusetts, coming to New Hampshire in 1950. Since then he has lived in Nashua periodically, and currently resides on Moody Street, Hudson, New Hampshire. DeGregory is married to the former Louise Dobrowolski.

**Results of Investigation****Reported Communist Party Affiliation**

The report of the Massachusetts Commission which investigated subversive activities in that state in 1937 listed DeGregory as a member of the Massachusetts State Committee of the Communist Party in 1937. He was then residing in Springfield.

The report also had the following to say about DeGregory: "Organizer for the Communist Party, particularly the Young Communist League. He attended the Party's national training school..." Records of the House Committee on Un-American Activities revealed that DeGregory was Communist Party candidate for Lieutenant Governor of Massachusetts in 1940. According to the "Daily Worker" of June 22, 1944, page 7, Hugo DeGregory was a member of the Communist Political Association.

On Communist Party letterhead stationery of date December 5, 1945, Hugo DeGregory, Secretary-Treasurer of the Communist Party, District No. 1, Boston, Massachusetts, was authorized to sign checks on behalf of the Communist Party.

On letterhead stationery of the Communist Party of Massachusetts dated January 4, 1946, Hugo DeGregory was

authorized to open a savings account for the Communist Party of Massachusetts. The letter was signed by DeGregory as Secretary of the Communist Party of Massachusetts.

In October 1946, Hugo DeGregory was listed as Secretary-Treasurer of the Communist Party in New England,

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[fol. 43] with headquarters in Boston, Massachusetts, on stationery of the Communist Party of New England.

On October 7, 1946, DeGregory was replaced as Secretary-Treasurer of the Communist Party of Massachusetts.

A former confidential informant of the Federal Bureau of Investigation provided information that he had met DeGregory at Communist Party headquarters in Boston at various times during the 1946-1949 period.

This office has received information from a reliable source that in 1948 Hugo DeGregory was a paid employee of the Communist Party, which information he refused to affirm or deny when questioned in this state's probe.

A witness who was closely associated with the Communist Party in Nashua testified that he had information from a member of the Communist Party that Hugo DeGregory was a paid employee of the Communist Party, and that this member had seen DeGregory at Communist Party meetings in Nashua in the late 1940's.

A former member of the Communist Party in New Hampshire testified that he had known Hugo DeGregory as an official of the Communist Party prior to 1946 and that DeGregory came to New Hampshire to preside over Communist Party meetings as an official as late as 1948, and that these appearances of DeGregory were sporadic.

William H. Teto, another former confidential informant of the Federal Bureau of Investigation, testified that Hugo DeGregory was known to him as a district official of the Communist Party who had attended a meeting of the National Committee of the Communist Party about 1948, and that DeGregory made a so-called security check of the Communist Party membership in 1949. The same witness testi-

fied that Hugo DeGregory attended a Marxist school with him in Boston, Massachusetts, and that when the Communist Party went underground, DeGregory moved to New Hampshire. The same witness testified that DeGregory was a "paid functionary" of the Communist Party in the 1940's.

Another former member of the Communist Party in New Hampshire testified that Hugo DeGregory attended a State Convention of the Communist Party with him at the Dobrowski residence in Nashua in the fall of 1950.

An admitted former member of the Communist Party in New Hampshire testified that Hugo DeGregory called on

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[fol. 44] him at his home in New Hampshire in the company of Elba Chase Nelson on Communist Party business in the spring of 1953 and sold him some Communist literature, which may have included Stalin's last statement. The literature was not available for examination.

Information from a reliable source has been received which revealed that on August 5, 1954, DeGregory was contacted by Tony Passaretti of Lawrence, Massachusetts. Passaretti has been identified as a Communist Party member in the late 1940's by William H. Teto. The significance of this contact was not established.

#### Testimony of Hugo DeGregory

At the outset of his testimony on July 12, 1954, Hugo DeGregory read a prepared statement charging that the law on which this investigation was based was both unjust and unconstitutional, that the investigation was a witch-hunt, that it was a fraud; that there was a plot of a "McCarthy gang" in New Hampshire. Later he charged that the state "apparatus" being what it was, it was very difficult to get any action on fascist activities. He freely made accusation of fascist activity, but offered no information to back up his unfounded accusations, and would say absolutely nothing concerning his possible knowledge of Communist activities. This line is reiterated constantly in the Communist "Daily Worker." DeGregory resorted to the constitutional provision against self-incrimination in refusing to say if he was a Communist Party member.

## MRS. LOUISE DeGREGORY

## Background

Mrs. Louise DeGregory was born Louise Wanda Dobrowolski in Nashua, New Hampshire. Her parents are Kathryn and Konstanti Dobrowolski, and her present husband is Hugo DeGregory. She graduated from Nashua High School and now resides on Moody Street, Hudson, New Hampshire. Mrs. DeGregory is an accomplished accordian player. Testimony has identified Konstanti Dobrowolski and Kathryn Dobrowolski, and Hugo DeGregory, as members of the Communist Party in the past.

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[fol. 45]

STATE'S EXHIBIT #2

Hearing held November 22, 1963

State House, Room 314

Concord, New Hampshire 10:00 A.M.

Present: William Maynard, Attorney General  
Joseph F. Gall, Special Assistant  
Howard S. Whiteside, Esq.  
Hugo DeGregory  
N. E. Douillette, Stenographer

All questioning by Mr. Gall, unless otherwise indicated.

Q. Mr. DeGregory, will you raise your right hand?

Witness sworn.

Q. What is your name, sir?

A. My name is Hugo DeGregory.

Q. And your address?

A. Moody Street, Hudson.

Q. Will counsel identify himself for the record?

Mr. Whiteside: Howard S. Whiteside, 30 State Street,  
Boston, Massachusetts.

Q. And you are representing Mr. DeGregory?

Mr. Whiteside: I am.

Q. Mr. DeGregory, by the provisions of New Hampshire Revised Statutes Annotated, 588:8-a, the Attorney General has been directed by the Legislature of this state to make a full and complete investigation of violations of the provisions of RSA 588 within the state of New Hampshire whenever there is reasonable and reliable information relating to the same and based on the investigation recommendations, if any, are submitted to the Legislature.

Have you ever been a member of the Communist Party?

[fol. 46] Mr. Whiteside: At this point I would like to make a statement, Mr. Gall. Before asking any questions of that nature you have to lay a foundation.

Q. Are you advising that we have to?

Mr. Whiteside: I am advising that you have to. I am advising that you are not entitled to proceed until you have laid a foundation and shown you have reasonable and reliable information relative to violations of the Act and that such information pertains to the witness in such a way that you are entitled to go forward with the questioning of him.

Q. Well, Mr. Whiteside, I think you already are familiar with the fact that the courts of this state have already acted and decided on this particular point?

Mr. Whiteside: I am quite aware that on March 20, 1961 the Court held that in February of 1960 you did have such reasonable and reliable information. This now is three and one-half years later. We have an absolutely new proceeding and we stand on what I have said.

Q. Well, you are—at this point then you are objecting.

Mr. Whiteside: I challenge the prerogative of the Attorney General as a legislative committee to go forward.

Q. You are challenging RSA 588:8-a?

Mr. Whiteside: I am not challenging the validity of RSA 588:8-a. I am challenging the validity of this legislative committee to go forward with this information without such a foundation as I have indicated.

Q. Very well, though there is some question as to whether it is necessary or not, we will proceed with the following:

There are certain sources in our society that would have us believe that the world has changed since a decade ago and that part of the present Communist Party line which embraces the concept of peaceful coexistence means that there isn't any longer in this country any need to keep abreast of Communist activities in this state and in this nation. In fact, what they say, or what some say, is that the information is no longer important. All of the com-[fol. 47] placency and the apathy and indifference on the part of the people cannot change for a moment the fact that everyone underneath is uneasily aware of what Karl Marx has said, that the war between Communism and capitalism is inevitable.

The preamble to the report of the Attorney General to the New Hampshire General Court, which report is dated January 5, 1955, in the Foreword contains an AP wire story from Elba Chase Nelson, the head of the Communist Party in this state in the late forties, to the effect that she was in accord with the views of William Foster and Eugene Dennis that in the event of war American Communists would cooperate [quote] with all democratic forces to defeat the predatory war aims of American imperialists. [End of quote]

It is felt that as a matter of law that a foundation here is not necessary. However, within the files of this committee there is extensive documented sworn testimony to the effect that Hugo DeGregory has been for a long time active within the Communist Party within this state.

Mr. Whiteside: Excuse me, Mr. Gall, may I interject a question, are you reading from the 1955 report?

Mr. Gall: I am reading information which lays a foundation for it.

Mr. Whiteside: Yes, but are you reading an excerpt from the 1955 report?

Mr. Gall: I am not reading from—

Mr. DeGregory: May I ask a question?

Mr. Gall: Do you want your counsel to ask it?

Mr. DeGregory: Can you date this information? What year are you talking about?

Mr. Gall: If you want to object to it you may. If you have an objection you can state it on the record, and we'll proceed now with the record:

And that he has considerable information about the persons who also have been active in the conduct of the Party's [fol. 48] affairs and the committee would like to know what information he has in seeking to find out whether or not there have been any violations of RSA 588 and whether or not any of those facts should concern the Legislature to enact further legislation or not. The 1955 report, previously cited, has been referred to in all cases in this investigation and actually was made after 1954, when in *Elba Chase Nelson v. Wyman* the basic subversive activities law of 1951 was upheld as constitutional.

It is submitted that there is no burden upon the Attorney General, acting as a committee, to offer to the witness that there is a reasonable basis for requiring the testimony. There is nothing further necessary than to establish probable cause to the question. It has been reported under oath that this witness has been a functionary and long-time active member of the Community Party. The Legislature of New Hampshire has determined as a matter of decision to keep abreast of Communist Party activities no matter what the Legislature in the other states may elect or decide to do and the Supreme Court of the United States has said that is something which is our business so long



as we do it constitutionally. In accordance with this legislation, so long as the questions are relevant to the investigation and concern "the security of the nation and this state, there is an obligation to answer these questions. A number of the questions in this proceeding are to find out whether there have been violations of RSA 588 and as defined in that Act, to determine whether subversive persons are located within the State of New Hampshire. The New Hampshire Legislature has directed the Attorney General to obtain this information, which is important to this state.

Mr. Whiteside: Now, sir, I will state that it is our position that unless you can show reasonable and reliable information relating to violations of the act within the period of the statute of limitations that you are not entitled to go forward on a statement such as you have just made, which does not tie to any date the information which you say you have, and which is just the same kind of statement Mr. Wyman made in 1957 and in 1960 and all the [fol. 49] information that was requested at that time had to do with a period of not less than seven years ago, and in order to make our position completely clear, Mr. DeGregory has a statement to put on the record.

Mr. DeGregory: I would like to state, Mr. Gall, that I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years. In fact, I am not even aware of the existence of a Communist Party in the state of New Hampshire at any time the authority you have cited, section 8-a, has been on the statute books, and in view of the foregoing I do not understand what I have to face here today.

Mr. Gall: Well, we have some questions to ask you. Have you ever been a member of the Communist Party?



Mr. Whiteside: I advise the witness not to answer that question on the basis I have stated, and on the basis which the witness himself has stated, you have not laid a foundation.

Mr. Gall: If you will permit Mr. DeGregory to answer the questions. If you want to advise him it is all right.

Mr. Whiteside: I do. In other words, Mr. DeGregory may answer for himself.

Mr. DeGregory: My response to that question would be that you have not laid the foundation. I see no relation of this question to any violation of the statute.

Mr. Gall: Were you a Communist Party member on June 28, 1960?

A. I have already answered that question, Mr. Gall.

Q. When did you join the Communist Party?

A. On advice of counsel, I am not proceeding until you lay a foundation and you have not laid it to either my satisfaction or Mr. Whiteside's.

[fol. 50] Q. Were you a paid member of the Communist Party?

A. May I consult with counsel, Mr. Gall.

Q. Take any time you want to.

A. We don't need any more time, Mr. Gall. The answer is the same.

Q. Were you an officer of the Communist Party?

A. Mr. Gall, will you place that in what time, what year are you speaking about?

Q. I am just asking the question generally.

A. You don't care if it is thirty years ago or today?

Q. That's the question and if you would answer it?

A. I am going to give the same answer.

Q. Did you ever have access to or control of membership or financial records of the Communist Party in New Hampshire?

A. What year, Mr. Gall.

Q. I have asked the question.

A. My reply will be the same.

Q. Did you attend Communist Party meetings in New Hampshire?

A. What year are you referring to, Mr. Gall.

Q. At any time?

A. My answer is the same.

Q. To what extent did Communist Party District One in Boston, Massachusetts have control over the Party's activities in New Hampshire?

A. My answer is the same.

[fol. 51] Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated to overthrow, destroy or alter the government of this state by force and violence?

A. What year do you have reference to, Mr. Gall.

Q. At any time?

A. My answer will be the same.

Q. Did you ever attend any Communist Party meetings in New Hampshire where any person advocated, abetted, advised or taught by any means the commission of an act to constitute a clear and present danger to the security of this state?

A. I have stated under oath, Mr. Gall, that I have no knowledge of any Communist activity during the period of the authority you have cited here; I have no knowledge of any violations of the law, and my answer is the same, you have not laid a foundation.

Q. At any such meeting did one or more persons conspire to commit any such act?

A. I have already testified regarding my knowledge of violation of the laws.

Q. Did you or any person known to you destroy any books, records or files, or secrete any funds in this state belonging to or owned by the Communist Party?

A. What year do you have reference to.

Q. At any time?

A. I have answered, you have not laid a foundation.

Q. Did you at any time participate or assist in the formation of or contribute to the support of the Communist Party in New Hampshire?

A. My answer remains the same.

Q. Will your answer be the same to any subsequent questions we may ask?

A. That's a hypothetical question, Mr. Gall.

[fol. 52] [Five-minute recess while Mr. Maynard out of room]

Mr. Maynard: I was going to say, I wasn't clear on I think parts of your answers to two questions, Mr. DeGregory, to the effect that you had no knowledge of any violations of the law, and whether you refer to the period since the passage of the act or for all time?

A. I am referring to the period—I am here under law, a lawful subpoena which refers to RSA 588:8-a. This is through 1963 and I believe any information you have must relate to 1963 but I am willing to go to the time, the first day this was put on the statute books, which was the 14th of June 1957, and in my answer I stated that during this entire period this statute, RSA 588:8-a, has been on the statute books I have not been a member of the Communist Party and I have no knowledge of Communist activities during the period it has been on the statute books, the authority stated in the subpoena, and therefore I cannot see the relevancy of my appearance here or any questions in view of my lack of knowledge during the period you have cited.

Mr. Maynard: You are not saying you are not guilty of any violation of law prior to the passage of this act?

A. I am confining my remarks, Mr. Maynard, entirely to the period of authority cited in this subpoena. I am trying to meet this subpoena. I am not meeting anything else because many of the things referred to in past reports have referred to matters twenty-five or thirty years ago, matters entirely outside the jurisdiction of the state of New Hampshire. And I am not sure about matters going

back that far because they are all questions totally removed from the authority under which you have subpoenaed me today.

Mr. Maynard: I think that covers my point.

Mr. Gall: Do you have any other statements?

Mr. Whiteside: I think we have made clear for the record that we are challenging your authority to go forward.

Mr. Gall: You mean the State's basis?

A. Yes, this investigating committee.

Mr. Gall: I have no additional questions but you will remain under subpoena, Mr. DeGregory.

Mr. Whiteside: For how long?

Mr. Gall: We will advise you, sir.

[fol. 53]

IN THE SUPREME COURT OF THE STATE  
OF NEW HAMPSHIRE

Merrimack,  
No. 5298.

WILLIAM MAYNARD, Attorney General

v.

HUGO DE GREGORY

Argued January 5, 1965.

OPINION—Decided April 30, 1965.

Petition under RSA 491:19, 20 to compel the defendant to answer certain questions asked him in a legislative investigation of subversive activities by the Attorney General pursuant to the provisions of RSA 588: 8-a (supp).

When directed by the Trial Court (*Loughlin, J.*) to answer the propounded questions, defendant refused. He informed the Court he was not invoking his privilege against self incrimination. The Court adjudged him in

contempt and ordered him committed to jail for a period of one year or until he purged himself of contempt. However, he was released on his own recognizance pending this appeal.

*William Maynard*, Attorney General, *R. Peter Shapiro*, Assistant Attorney General, and *Joseph F. Gall*, Special Assistant to the Attorney General (*Messrs. Shapiro and Gall orally*) for the Attorney General.

*Lawrence J. Walsh* and *Howard S. Whiteside* (of Massachusetts) (*Mr. Whiteside orally*), for the defendant.

Lampron, J. The first issue raised by the defendant is whether under the circumstances of this case the Attorney General has power under RSA 588: 8-a (supp) to question him and whether the Superior Court has power to commit him for his refusal to answer the questions asked.

RSA 588:8-c (supp) reads in part as follows: "At any time when the Attorney General has information which he deems reasonable or reliable relating to violations of the provisions of this chapter he shall make full and complete investigation thereof and shall report to the General Court the results of this investigation, together with his recommendations, if any, for legislation."

We held in *Wyman v. De Gregory*, 103 N.H. 214, 216, 217, that this "statute does not require that there must be a violation of law before the legislative investigation can be set in motion. It only requires that there be reasonable and reliable information 'relating' to violations of the provisions of RSA Ch. 588" relating to subversive activity [fol. 54] ties. This judgment was affirmed by the United States Supreme Court. *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19. That Court, as recently as March, 1963, reaffirmed the broad inherent power of a Legislature to conduct investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes." *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 545. See Annot. 3 L. Ed. 2d 1647, 1650.

The defendant argues, however, that the Attorney General did not comply with RSA 588:8-a (supp) in that he failed to show (1) that he "has information which he deems reasonable or reliable relating to violations of the provisions of" RSA ch. 588, and (2) that he has reasonable cause to believe that the defendant has evidence pertinent to the subject under investigation.

It has long been recognized that the tenets of the Communist Party include the overthrow of government by force and violence. *Nelson v. Wyman*, 99 N.H. 33, 50; *Barenblatt v. United States*, 360 U.S. 109, 128. That the State of New Hampshire has an interest in the preservation of its government against the menace of Communist subversion is firmly established. *Nelson v. Wyman*, *supra*; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547. Furthermore our Legislature has manifested a continuing concern to be kept informed by its investigating committee, the Attorney General, as to the need of "further legislation in the field of subversive activities." *Wyman v. DeGregory*, 103 N.H. 214, 217; RSA 588:8-a (supp); Laws 1961, 224:1 (p. 311) and 225:1 (p. 402); Laws 1963, 198:1 (p. 201) and 199:1 (p. 298).

In the present proceeding instituted in 1963 the Attorney General introduced in evidence a report to the Legislature, made by a prior Attorney General, showing the existence of a Communist Party and Communist influence in New Hampshire and the probable continuance of such activities in our state. Report of the Attorney General to New Hampshire General Court (January 5, 1955). In prior proceedings beginning in February 1960, the Attorney General attempted to obtain information from the defendant, which he is still seeking in the present proceedings. We hold that given the nature of the Communist movement and its mode of operation the above report could constitute information which the Attorney General could deem reasonable or reliable relating to violations of RSA ch. 588 and the proper basis for his present investigation of subversive activities

on behalf of the Legislature. *Wyman v. De Gregory*, 103 N.H. 214, 217; *De Gregory v. Attorney General of New Hampshire*, 368 U.S. 19; *Gibson v. Florida Legislative Investigation Com.*, 372 U.S. 539, 547.

It was also stated in the above report that the then Attorney General had reliable information concerning defendant's participation in the Communist Party as an officer, a presiding officer at conferences in New Hampshire, and in numerous other party activities. (pp. 204-206). When questioned by the Attorney General on November 22, 1963, and also in the Superior Court in the hearing which is the basis of this appeal, the defendant made the following [fol. 55] statement: "I am not now a member of the Communist Party and have not been at any time since the authority you have cited, RSA 588:8-a; that I have no knowledge of any Communist activities in New Hampshire during this period or of any violations of RSA 588 during this period of six and one-half years." Even if taken at its face value, this statement does not render otherwise proper and pertinent information regarding his prior contacts and involvements with the Communist Party and its members in this State beyond the legitimate interest and jurisdiction of the Attorney General acting as the investigating committee of the Legislature. *Nelson v. Wyman*, 99 N.H. 33, 39; *Uphaus v. Wyman*, 360 U.S. 72, 78.

We hold, as we did in *Wyman v. De Gregory*, 103 N.H. 214, 217, that the Attorney General had reasonable and reliable information relating to violations of RSA ch. 588 which provided a valid and relevant basis for the investigation of the defendant. We hold further that the Superior Court could properly hold the defendant in contempt under RSA 491:19, 20 for his refusal to answer whether he was ever a member, a paid member, or an officer of the Communist Party; if he ever had access to or control of membership or financial records of the Party in New Hampshire or attended Party meetings; the extent of control of the Party activities in this state exerted by a Party unit in Boston of which he is alleged to have been an officer; if he



attended Party meetings in New Hampshire where advocacy of the overthrow of the Government took place or persons conspired to so do; also questions as to his knowledge about the books, records or files of the Party in this state and about his contributions to its support. *Uphaus v. Wyman*, 360 U.S. 72; *Barenblatt v. United States*, 360 U.S. 109; *Wilkinson v. United States*, 365 U.S. 399; *Braden v. United States*, 365 U.S. 431.

Defendant's last contention is that if RSA 588:8-a (supp) is held to empower the Attorney General in the circumstances of this case, to require defendant to answer questions, this statute is in contravention of the Fourteenth Amendment. This is for the reason, in the words of his brief "that the danger to the State, which must be present to warrant action under a statute like c. 588, s. 8A has not been shown to exist at any time during plaintiff's current attempts to question defendant or in fact for years prior thereto."

As we have stated previously in this opinion the investigation of Communist Party activities in this state is within the power of our Legislature and the authority granted to its investigating committee, the Attorney General. Because of the nature of the Communist Party it is a proper and permissible subject of constant scrutiny by the Legislature. *Gibson v. Florida Legislative Investigating Com.*, 372 U.S. 539, 547. A defendant's own past or present membership in the Party is within the purview of such an investigation. *Id.* The nexus between the defendant and subversive activities disclosed by the report offered in evidence by the Attorney General and properly admitted by the Court, furnished adequate justification for his present interrogation of the defendant. The decisions in No. 44 [fol. 56] *American Committee for Protection of Foreign Born v. Subversive Activities Control Board*, — U.S. —, 33 L.W. 4336, and No. 65 *Veterans of Abraham Lincoln Brigade v. Subversive Activities Control Board*, — U.S. —, 33 L.W. 4339 (decided April 26, 1965) are not apposite to the situation existing in this case. This exer-



cise by the State of its power adequately to inform itself in order to act and protect its legitimate and vital interests has not been "pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights" of the defendant. *Uphaus v. Wyman*, 360 U.S. 72, 81.

*Exceptions overruled.*

DUNCAN, J., concurred in the result; the others concurred.

DUNCAN, J., *concurring*: The 1957 statute, under which this proceeding was instituted in 1963, directs the Attorney General to make an investigation of "violations" of the "Subversive Activities Act of 1951," or of "information . . . relating to" such violations. RSA 588:8-a (supp). Section 8-a and my views concerning it have not changed since it was under consideration four years ago in a prior proceeding against this defendant. See *Wyman v. DeGregory*, 103 N.H. 214, 218-219. The foundation for the most recent order that the defendant answer questions propounded by the Attorney General is once again the report made by Attorney General Wyman to the Legislature in 1955. However, I am bound to accept as decided law the interpretation placed upon s. 8-a, *supra*, by a majority of this court in *Wyman v. DeGregory, supra*, since affirmed by *DeGregory v. Attorney General of New Hampshire*, 368 U.S. 19, and therefore concur in the order entered today.

[fol. 57]

IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE  
No. 5298

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ATTORNEY GENERAL OF NEW HAMPSHIRE,

VS.

HUGO DeGREGORY.

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed May 28, 1965

I. Notice is hereby given that Hugo DeGregory the above-named defendant hereby appeals to the Supreme Court of the United States from the final judgment of this Court which overruled his exceptions to the decree of the Superior Court of Merrimack County of the State of New Hampshire, adjudging him in contempt of the Superior Court in and for said County of Merrimack and ordered him committed to County Jail, there to remain for one year or until he earlier was purged of said contempt. Pending appeal, bail was set at \$1,000 and he was released on his own recognizance.

Final judgment in this proceeding was entered April 30, 1965 by order of said Supreme Court of New Hampshire.

This appeal is taken pursuant to 28 USC, §1257(2).

II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The reserved case No. 5298 argued January 5, 1965, the defendant's brief, the Attorney General's brief, and the New Hampshire Supreme Court's decision thereon dated April 30, 1965 and the concurring opinion of Duncan J.

[fol. 58] 2. Transcript of hearing before the Attorney General at Concord, New Hampshire on November 22, 1963.

3. Transcript of hearing at Concord, New Hampshire on May 20, 1964 in the Superior Court for Merrimack County.

4. All exhibits introduced in the Superior Court hearing, particularly State's Exhibit I (Report of Attorney General to New Hampshire General Court on January 5, 1955).

5. Notice of appeal.

III. The following questions are presented by this appeal.

1. Whether RSA, Chapter 588, §8A, (Chapter 178, Laws of 1957) violates due process of law under the Fourteenth Amendment to the United States Constitution by permitting a purported legislative committee free of legislative control, and unlimited in time, to be used as a device to bestow wide judicial and legislative powers upon the Attorney General of the State of New Hampshire.


2. Whether RSA, Chapter 588, §8A as applied by this Court on the record of this case, violates due process of law under the Fourteenth Amendment to the United States Constitution by authorizing a legislative committee to summon and question the defendant herein without any legal showing of foundation, basis in fact or probable cause for conducting an investigation and for investigating the defendant.

3. Whether the decision of this Court in this case denied to defendant his right of privacy and abridged his freedom of speech and assembly under the First Amendment to the United States Constitution as guaranteed to him by the Fourteenth Amendment to said Constitution by holding that [fol. 59] RSA, Chapter 588, §8A, authorized the Attorney General to summon and question the defendant herein without any legal showing of foundation, basis in fact or prob-

able cause for conducting an investigation or for investigating the defendant.

Howard S. Whiteside, 30 State Street, Boston 9,  
Mass.

Proof of Service (omitted in printing).

[fol. 60] Clerk's Certificate to foregoing transcript  
(omitted in printing).  \_\_\_\_\_

[fol. 61]

SUPREME COURT OF THE UNITED STATES

No. 396, October Term, 1965

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HUGO DeGREGORY, Appellant,

v.

ATTORNEY GENERAL OF THE STATE OF NEW HAMPSHIRE.

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Appeal from the Supreme Court of the State of New  
Hampshire.

ORDER NOTING PROBABLE JURISDICTION—October 18, 1965

The statement of jurisdiction in this case having been  
submitted and considered by the Court, probable jurisdic-  
tion is noted and the case is placed on the summary calen-  
dar.